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and certain subsidiaries

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	In Proceedings Under Chapter 11
)	
BAPTIST FOUNDATION OF ARIZONA, an)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and)	13364-ECF-GBN
related proceedings,)	
)	All Cases Jointly Administered Under Case
)	No. 99-13275-ECF-GBN
Debtors.)	
)	DEBTORS' OBJECTION TO CLAIM OF
)	DAVID A. BIRDSSELL, DISBURSING AGENT
)	FOR IN RE MARION & BETTY JORDAN
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proofs of claim filed by David A. Birdsell, Disbursing Agent for In re Marion & Betty Jordan (“**Birdsell**”). In support of this objection, BFA offers the following memorandum of points and authorities.

MEMORANDUM IN SUPPORT OF OBJECTION

I. FACTS

On March 28, 2000, Birdsell filed a proof of claim alleging an unsecured (non-investor) nonpriority claim for \$1,332,480.00 related to a November 1987 gift annuity agreement between BFA and the Jordans (“Agreement”) whereby the Jordans contributed and donated to BFA as an absolute gift certain described property in return for BFA’s agreement to pay to the Jordans the sum of \$64,000.00 per year (paid in equal quarterly installments of \$16,000.00) during their lifetimes and the lifetime of the survivor of them. Under the terms of the Agreement, all payment obligations from BFA terminate with the last regular payment due preceding the death of the surviving donor.

There are no provisions of the Agreement whereby the Jordans gain an entitlement to an early payout of the quarterly installments.

There is also pending in the United States District Court a lawsuit related to the environmental condition of the property transferred from the Jordans to BFA under the terms of the gift annuity.

II. LAW AND BASIS FOR OBJECTION

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.” Section 502(b) provides that “[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.”

Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules “shall constitute prima facie evidence of the validity and amount of

the claim.” The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim.

However, “the ultimate burden of persuasion is always on the claimant.” In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)).

A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007 (adv. comm. note).

BFA objects to the amount of Birdsell’s claim on the ground that it is a contingent and unliquidated claim that appears to have been calculated by seeking accelerated payments that would not become due for up to 25 to 30 years (based on an apparent assumption that one or both of the Jordans will be collecting payments into their 90’s). The claim calculation also fails to take into account any discount rates applicable to such accelerated payments otherwise built on the assumption that such payments were to be made over the next 30 years.

BFA also objects to the amount of the claim on the ground that there is pending in federal court litigation over the environmental property transferred by the Jordans to BFA under the Agreement which could have a significant impact on BFA’s obligation to continue payments under the Agreement.

Finally, BFA objects to this claim on the ground that, notwithstanding Birdsell’s characterization of this claim as an unsecured noninvestor claim, the claim, which relates to a gift annuity, is considered an investor claim under the liquidation and reorganization plan. Accordingly, BFA refers the Court to Debtors’ Omnibus Objection to Claims Submitted by Investors, which is incorporated herein by reference.

III. CONCLUSION

For the above reasons, BFA respectfully requests that the Court (i) schedule an evidentiary hearing on the claim brought by Birdsell; (ii) require claimant to demonstrate his claim by a preponderance of the evidence; and (iii) disallow such claim to the extent merited by the applicable facts and law.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

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